

ENVIRONMENTAL LAW AND JUSTICE CLINIC

May 26, 2009

SUBMITTED BY E-MAIL AND FIRST CLASS MAIL

California Energy Commission
Dockets Office, MS-4
Re: Docket No. # 09-IEP-10
1516 Ninth Street
Sacramento, CA 95814-5512
Email: docket@energy.state.ca.us

To the California Energy Commission:

The Environmental Law and Justice Clinic at Golden Gate University School of Law submits these comments on behalf of Bayview Hunters Point Community Advocates, San Francisco Baykeeper, and Communities for a Better Environment in regard to the State Water Resources Quality Control Board's policy, as proposed in its March 2008 policy document, to substantially eliminate the use of once-through cooling structures by California's coastal and estuary power plants.

These community and environmental groups have actively advocated for the closure of the Mirant Corporation's Potrero Power Plant ("Potrero Plant"), located in southeast San Francisco, in order to avoid its deleterious environmental impacts. The Potrero Plant's devastating impacts on the San Francisco Bay and Southeast San Francisco communities are in part caused by its use of once-through cooling. We therefore strongly support the State Water Board's proposed policy of eliminating once-through cooling and urge the California Energy Commission, in collaboration with the State Water Board, to expeditiously implement the phase-out of once-through cooling from new and existing power plants at the earliest possible date. The purpose of these comments is to highlight the importance of implementing the State Water Board's proposed policy as soon as possible, by highlighting the detrimental environmental consequences of the Potrero Plant's once-through cooling system.

1. The Potrero Plant in Southeast San Francisco

The Potrero Plant has been operating for many decades and is one of the oldest and dirtiest power plants in California. *See* Letter from San Francisco City Attorney's Office to Regional Water Board (dated April 3, 2009). Currently, the Potrero Plant's

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Unit 3 is operating under a wastewater discharge permit that expired on December 31, 2008, as the Regional Water Board awaits the implementation of the State Water Board's final policy on once-through cooling. *See* Regional Water Board Website, *available at* http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/npdes/Permit_Schedule-09-04.pdf.

Southeast San Francisco is overburdened by industrial pollution, as it is home to a disproportionate number of polluting facilities, as well as freeways and two major roads. San Francisco Board of Supervisors Resolution No. 465-08 (adopted October 28, 2008). San Francisco's General Plan recounts the industrial history of the Bayview Hunters Point community in Southeast San Francisco:

Bayview Hunters Point has been the focus of some of the city's most noxious and unhealthy heavy industries, including steel manufacturing, ship repair, junk yards, and auto wrecking [The] development of Bayview Hunters Point as a predominantly industrial and residential area was thereby achieved at extensive costs to environmental health.

SF General Plan, Bayview Hunters Point, *available at* <http://www.sfgov.org>.

Moreover, Southeast San Francisco's residential neighborhoods predominately consist of communities of color and include some of San Francisco's most economically disadvantaged residents. San Francisco Board of Supervisors Resolution No. 465-08 (adopted October 28, 2008). Many of these residents use the San Francisco Bay for recreation and subsistence fishing. *Ibid.* In recent years these communities have seen extraordinarily high rates of cancer, asthma, and other healthcare problems that are known to be influenced by environmental factors. *Ibid.*

2. The Harmful Impacts of Once-Through Cooling on the San Francisco Bay and Southeast San Francisco Communities

The San Francisco Bay is an invaluable resource and protecting the Bay ecosystem is an important state interest:

[T]he Bay Area and Coastal Zone are unique natural resources whose protection is of paramount concern to present and future residents of the state, and nation. [D]ue to their delicate physical mechanism, the Legislature and the people of the state find it necessary to have the various interests – government, private individuals and general public – protected.

Reed v. California Coastal Zone Conservation Com., (1975) 55 Cal.App.3d 889, 894. Effects on one area of the Bay may have widespread effects throughout the ecosystem. *See id.*

The Potrero Plant's Unit 3 uses over 206 million gallons of water drawn from the San Francisco Bay every day for cooling. San Francisco Board of Supervisors Resolution No. 465-08 (adopted October 28, 2008). Once-through cooling kills large numbers of fish, larvae, plankton and other marine organisms as they are drawn through screens and other parts of the plant's cooling system. California Lands Commission Proposed Resolution Regarding Once-Through Cooling (April 13, 2006). Once-through cooling also affects the San Francisco Bay environment by raising the temperature of receiving waters, and by killing and displacing wildlife and plant life. *See ibid.* The San Francisco Bay ecosystem is adversely impacted by this loss of aquatic life and habitat. San Francisco Board of Supervisors Resolution No. 465-08 (adopted October 28, 2008).

Furthermore, the wastewater discharged from the Potrero Plant into the San Francisco Bay contains numerous pollutants of concern such as copper, mercury, dioxins and PCBs that harm the aquatic environment. *See* Regional Water Board Tentative Order NPDES Permit No. CA0005657 (adopted May 10, 2006). These pollutants accumulate in fish and harm those who rely on fish and shellfish from the Bay to supplement their diets. *See* San Francisco Board of Supervisors Resolution No. 465-08 (adopted October 28, 2008). Thus, the Potrero Plant adversely affects the fish populations used for subsistence by low-income communities and communities of color, imposing an undue burden on these communities. *Ibid.*

The San Francisco Board of Supervisors has adopted a resolution opposing the renewal of the Potrero Plant's wastewater permit and urging the Regional Water Board to decline to extend the permit. *See* San Francisco Board of Supervisors Resolution No. 465-08 (adopted October 28, 2008). Further, recognizing the Potrero Plant's deleterious impact on the Bay and Southeast San Francisco's overburdened communities, the Board of Supervisors recently unanimously enacted an ordinance establishing City policy to take all feasible steps to close the facility as soon as possible. San Francisco Board of Supervisors Ordinance No. 081600 (adopted May 19, 2009).

3. Potrero's Plant Unit 3 Is Not Necessary to Maintain Local Energy Reliability

Mayor Newsom, the City Attorney's Office, and members of the Board of Supervisors have clearly stated that the Potrero Plant's Unit 3 is not necessary to maintain local energy reliability, thus allowing Unit 3 to be retired by the end of 2009 and the remainder of the plant to close by the end of 2010. *See* Letter from Mayor Newsom et al. to CAISO (dated May 8, 2009). Likewise, as recently indicated in a letter from the California Independent System Operator to San Francisco Mayor Newsom, Unit 3 will not be required to operate for reliability once the Trans-Bay Cable begins service. *Ibid.*

For these reasons, Bayview Hunters Point Community Advocates, San

Francisco Baykeeper, and Communities for a Better Environment support the State Water Board's proposed policy of eliminating the use of once-through cooling at California's coastal and estuary power plants due to harmful environmental effects, similar to those caused by the Potrero Power Plant. The Environmental Law and Justice Clinic thanks you for considering these comments and looks forward to your response.

Sincerely,

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